

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMULO BAGUSTO Y DE GUZMAN, ACCUSED-APPELLANT.

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MACALINO, J:

On appeal is the Decision[1] dated January 25, 2012 of the Regional Trial Court of Urdaneta City, Branch 48 (RTC) in Criminal Case No. U-13991 for “Illegal Possession of Dangerous Drugs.” The dispositive portion of the assailed Decision reads:

“WHEREFORE, in the light of the foregoing, accused Romulo Bagusto alias Pilat is hereby sentenced to suffer the penalty of imprisonment from twelve (12) years and one (1) day to twenty (20) years and to pay a fine of Three Hundred Thousand Pesos (Php300,000.00).

The illegal drugs presented in court as evidence is hereby forfeited in favor of the government and shall be forwarded to the PDEA Office for proper disposition pursuant to Par. 7, Sec. 21 of R.A. 9165.

SO ORDERED.”

FACTS

In an Information[2] dated October 4, 2005, City Prosecutor Silvestre Redemptor A. Ridao charged accused-appellant Romulo Bagusto y de Guzman alias “Pilat” (accused-appellant) of illegal possession of dangerous drugs, committed as follows:

“That on or about 2:45 o'clock in the afternoon of October 3, 2005 at Brgy. Nancayasan, Urdaneta City, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, control and custody seven (7) heat sealed transparent plastic bags containing Methamphetamine Hydrochloride (SHABU), a dangerous drug, each weighing A1=0.29gram, A2=0.30gram, A3=0.35gram, A4=0.35gram, A5=0.68gram, A6=0.65gram and A7=0.09gram, with a total weight of 2.71 grams.

CONTRARY to Art. II, Sec. 11 of Republic Act 9165, otherwise known as 'Comprehensive Dangerous Drugs Act of 2002.’”

On March 6, 2006, accused-appellant pleaded “Not Guilty” to the offense charged against him.[3]

During the pre-trial held on April 5, 2006, the parties stipulated on the identity of accused-appellant and the jurisdiction of the court.[4] Thereafter, trial ensued.

Version of the Prosecution

The prosecution presented 4 witnesses, namely, P/Insp. Pamfilo Regis (P/Insp. Regis), PO2 Apollo Calimlim (PO2 Calimlim), P/Insp. Emelda B. Roderos (P/Insp. Roderos) PO1 Edwin Vallo (PO1 Vallo) to establish the following:

On October 3, 2005, at around 8:00 a.m., a confidential informant arrived in the office of the Philippine Drugs Enforcement Agency (PDEA) – Regional Office 1.[5] This informant relayed to PO1 Vallo that a person named

“Pilat” (herein accused-appellant) was selling drugs in Doña Loleng, Nancayasan, Urdaneta City. PO1 Vallo informed their team leader, SPO2 Rabago, about the matter. Together with the informant, SPO2 Rabago tasked PO1 Vallo and PO2 Calimlim to conduct a surveillance on the reported location.[6]

At about 9:00 a.m. of October 3, 2005, the surveillance team arrived in the reported area. The informant pointed to the team the alleged house of accused-appellant. The surveillance team noticed that there were people going in and out of said house. The informant told the team that these persons were there to buy shabu.[7]

After the surveillance, PO1 Vallo and PO2 Calilim reported to SPO2 Rabago who, in turn, formed a buy bust team for the arrest of accused-appellant. He assigned PO1 Vallo as poseur-buyer and designated PO2 Calimlim as back up. The buy-bust team also prepared the buy-bust money and agreed on the pre-assigned signal, which was the removal of ball cap by PO1 Vallo.[8]

At about 2:45 p.m., 9 members of the PDEA returned to the target area. PO1 Vallo and the informant proceeded to the house of accused-appellant. The other members of the PDEA positioned themselves about 15 to 20 meters away from there.[9] Subsequently, PO1 Vallo and informant met accused-appellant outside of his house.[10] The informant told accused-appellant that PO1 Vallo was a pusher. Accused-appellant then asked PO1 Vallo how much shabu he would be buying. PO1 Vallo replied that he would be buying shabu amounting to PhP8,000.00.[11]

Suddenly, someone shouted “PDEA, PDEA” and a commotion transpired.[12] Because of this, PO1 Vallo informed accused-appellant that they were from PDEA and he was being arrested for selling shabu.[13] Because accused-appellant was attempting to ran away, PO1 Vallo grabbed him and recovered from his hands 7 plastic sachets of suspected shabu.[14] PO1 Vallo immediately marked these sachets and PO2 Calimlim inventoried them.[15] PO1 Vallo and PO2 Calimlim placed their respective initials - “EMV” for “Edwin Macalandia Vallo” and “AC” for “Apollo Calimlim” - on the recovered items.[16] Thereafter, PO2 Calimlim assisted PO1 Vallo in arresting accused-appellant.[17]

On the same day, P/Chief Insp. Christopher Abrahano (P/Chief Insp. Abrahano) signed a Request for Laboratory Examination[18] of the seized items. PO2 Calimlim brought said request and the confiscated items to the PNP Crime Laboratory Service 1, Urdaneta City, Pangasinan for laboratory examination.[19] Subsequently, Chemistry Report No. D-126-05 executed by P/Insp. Roderos revealed that the specimen submitted was positive of methamphetamine hydrochloride, a dangerous drug.[20]

During the trial, the prosecution stipulated on the following matters, among others, which were admitted by the defense:[21]

- 1) the receipt of the office of P/Insp. Regis of the letter-request for laboratory examination of the 7 sachets containing 2.71 grams specimen;
- 2) the laboratory examination conducted by P/Insp. Roderos on the same specimen received by the office of P/Insp. Regis;
- 3) the due execution and authenticity of the aforesaid chemistry report; and
- 4) the fact that the 7 heat-sealed transparent plastic sachets presented to the court were the same sachets examined by P/Insp. Roderos;

Version of the Defense

After the prosecution rested its case, the defense presented accused-appellant, Noel Israel (Noel), Rosalina Bagusto and Racquel Israel to establish the following:

On October 3, 2005, at about 2:45 p.m., accused-appellant was taking a bath in a deep well near his house in Nancayasan, Urdaneta City. While he was drying up himself with a towel, he was suddenly arrested by 2 persons. Accused-appellant asked one of the persons arresting him, “why are you arresting me, I did not do anything wrong sir.” Consequently, the people in the premises ran away.[22] Noel tried to intervene when accused-appellant was being boarded on a vehicle but he was prevented by the persons arresting accused-appellant.[23]

Accused-appellant was brought to a house in Dagupan. There, the persons who arrested him and the other persons present in the house told him that they were members of the PDEA. Accused-appellant remained in the house until 4:00 a.m. of the following day. Afterwards, they brought accused-appellant to the BJMP.[24]

On January 25, 2012, the RTC rendered the assailed Decision finding accused-appellant guilty beyond reasonable doubt of the offense charged against him.

ASSIGNMENT OF ERRORS

Aggrieved, accused-appellant filed this Appeal[25] raising the following assignment of errors:

“i

THE TRIAL COURT ERRED, WITH DUE RESPECT, WHEN IT FAILED TO RULE THAT THERE WERE LAPSES ON THE INTEGRITY AND IDENTITY OF SEVEN (7) PLASTIC SACHETS OF SHABU ALLEGEDLY CONFISC[A]TED FROM ACUSED-APPELLANT PRESENTED AS EVIDENCE BY THE PROSECUTION.

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THE TRIAL COURT ERRED, WITH DUE RESPECT, IN CONVICTING ACCUSED-APPELLANT ON GROUNDS OF REASONABLE DOUBT.”[26]

Accused-appellant argues that the confiscated items consisting of 7 sachets of shabu allegedly taken from him was not immediately marked at the scene of the crime. He states that while the police arrested him in Urdaneta City, Pangasinan, the police should have inventoried the seized items at the place where he was arrested or at the nearest police station in Urdaneta, City. He also avers that there was no photograph of the confiscated items, and the inventory was not made in his presence or his counsel, or of the media or any elected official. Thus, there were lapses in the chain of custody of the seized items in the instant case.

On the contrary, plaintiff-appellee People of the Philippines alleges that the testimonies of PO2 Calimlim and PO1 Vallo prove that accused-appellant was caught in flagrante delicto in possession of the prohibited drugs. It contends that accused-appellant's denial cannot overcome the positive proof of his guilt.

RULING OF THIS COURT

For a case of illegal possession of dangerous drugs to prosper, the following elements must be established beyond a reasonable doubt: 1) the accused is in possession of an item or object identified to be a prohibited drug; 2) such possession is unauthorized by law; and 3) the accused freely and consciously possess said drug.[27] These elements are present in the instant case.

The prosecution established that a buy-bust operation was supposed to be conducted against accused-appellant. It was, however, pre-empted when someone shouted “PDEA, PDEA” while PO1 Vallo and the informant were transacting with accused-appellant. Although the buy-bust was unsuccessful, PO1 Vallo and PO2 Calimlim recovered from accused-appellant 7 sachets of suspected shabu. Upon chemical examination, said confiscated items were found positive of methamphetamine hydrochloride or shabu, a prohibited drug.

This Court upholds the presumption of regularity in the performance of official duty by the police officers involved in the case. In drug-related cases, weight is given to the testimonies of police officers who are presumed to have regularly performed their duties, unless there is evidence to the contrary. Here, there is no proof that the police officers involved had improper motive in indicting accused-appellant for illegal possession of dangerous drugs. Thus, the presumption that they regularly perform their duties in apprehending accused-appellant prevails.[28]

Accused-appellant argues that there were lapses in the chain of custody of the seized items. His contention is, nonetheless, untenable.

Section 21 of the Implementing Rules and Regulations of Republic Act 9165 (Comprehensive Dangerous Drugs Act of 2002) provides:

“Section 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.”

In this case, the chain of custody of the confiscated items was clearly established. PO1 Vallo seized from accused-appellant 7 sachets of suspected shabu. PO1 Vallo and PO2 Calimlim immediately marked the seized items with their respective initials “Edwin Macalandia Vallo” and “AC” for “Apollo Calimlim.” PO2 Calimlim also inventoried these items in the presence of barangay kagawad Gerardo Bertran and Helen Fermill.[29] Thereafter, PO2 Calimlim delivered the Request for Laboratory Examination and the marked items seized to the PNP Crime Laboratory. The Request and the specimen were received by the office of P/Insp. Regis. Later, Chemistry Report No. D-126-05 revealed that the specimen submitted gave a positive result to the test for methamphetamine hydrochloride. PO1 Vallo and PO2 Calimlim identified the same specimen in court.[30] These circumstances prove the unbroken chain of custody of the seized items. Thus, it is undeniable that the integrity and evidentiary value of the confiscated prohibited drugs were preserved.

Besides, accused-appellant’s denial cannot be given weight as he failed to adduce any evidence that he was falsely incriminated of the offense charged by the police. Accused-appellant did not even formally charge these

police officers to show that they had ill motive in accusing him of illegal possession of dangerous drugs.[31] Hence, we concur with the finding of the RTC that accused-appellant is guilty beyond reasonable doubt of illegal possession of dangerous drugs.

Finally, we modify the penalty imposed by the RTC against accused-appellant.

Section 11(3), Article II of Republic Act 9165 provides for the penalty for illegal possession of dangerous drugs, as follows:

“Section 11. Possession of Dangerous Drugs. - (3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.” (Emphasis supplied)

In addition, Section 1 of the Indeterminate Sentence Law (ISL) provides that in case of a special law, the accused shall be sentenced “to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.” Thus, applying the ISL to the imposable penalty under Republic Act 9165 and under the circumstances, we find the penalty of imprisonment from 12 years and 1 day, as minimum, to 14 years and 8 months, as maximum, to be proper. We, nonetheless, sustain the fine imposed by the RTC amounting to three hundred thousand pesos (PhP300,000.00).[32]

WHEREFORE, premises considered, the Decision dated January 25, 2012 of the Regional Trial Court of Urdaneta City, Branch 48 in Criminal Case No. U-13991 is **AFFIRMED** with **MODIFICATION** that accused-appellant Romulo Bagusto y de Guzman is sentenced to the indeterminate penalty of 12 years and 1 day, as minimum, to 14 years and 8 months, as maximum.

SO ORDERED.

Castillo, M., J. Chairperson and Galapate-Laguilles, Z. T., JJ., concur.

[1] Rollo, pp. 42-49.

[2] Records, p. 1.

[3] Records, p. 58.

[4] Records, p. 65.

[5] TSN, June 14, 2006, pp. 5-6.

[6] TSN, March 12, 2007, pp. 3-4.

[7] TSN, June 21, 2006, pp. 3-4.

[8] Records, p. 5.

[9] TSN, June 21, 2006, p. 5.

- [10] TSN, June 21, 2006, p. 7.
- [11] TSN, March 12, 2007, p. 5.
- [12] TSN, June 21, 2006, p. 6.
- [13] TSN, March 12, 2007, pp. 5-6.
- [14] Records, p. 5; TSN, March 12, 2007, p. 16.
- [15] TSN, June 14, 2006, p. 8.
- [16] TSN, August 28, 2007, p. 2.
- [17] TSN, March 12, 2007, p. 7.
- [18] Records, p. 10.
- [19] Records, p. 10.
- [20] Records, p. 184.
- [21] Records, pp. 90, 124.
- [22] TSN, November 27, 2007, pp. 4-6.
- [23] TSN, November 25, 2008, p. 6.
- [24] TSN, November 27, 2007, pp. 6-8.
- [25] Records, p. 421.
- [26] Rollo, p. 38.
- [27] *Portuguez vs. People*, G.R. No.194499, January 14, 2015.
- [28] *Portuguez vs. People*, G.R. No.194499, January 14, 2015.
- [29] Records, p. 8.
- [30] TSN, June 14, 2006, p. 9; March 12, 2007, p. 7.
- [31] *People vs. Bautista*, G.R. No. 177320, February 22, 2012.
- [32] *Asiatco vs. People*, G.R. No. 195005, September 12, 2011.

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